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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,428	11/20/2003	Gregory F. Andersen	23691.00	6968

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EXAMINER

SILBERMANN, JOANNE

ART UNIT PAPER NUMBER

3611

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/716,428

Applicant(s)

ANDERSEN, GREGORY F.

Examiner

Joanne Silbermann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on March 14, 2005 is acknowledged. The traversal is on the ground(s) that the applicant should be entitled to a reasonable number of embodiments within a general inventive concept. This is not found persuasive because the species are mutually exclusive and would require separate searches.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 15 and 16 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 14, 2005.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The hitch receiver does not appear to be part of the claimed invention in claims 1 and 2, however claim 8 further describes its structure. If the receiver is part of the

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invention, the language of claims 1 and 2 should be changed. If it is not, claim 8 should be changed.

6. Also, the designation of the type of trailer hitch used (II IV or V) does not clearly set forth its structure. Such designations may change, thus changing the meaning of the claim. Correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Peters, US #5,330,084.

9. Peters discloses a holder including a receiver (Figure 2) having pole-receiving portion (plates 13 and 14) and tongue mount portion 11. The tongue mount portion may be secured in a vehicle trailer hitch (Figure 1) by a lock pin through bore 12. The pole receiving portion extends from the tongue mount portion and includes opposed vertical sidewalls 13 and 14, pivot pin receiving bores (for pin 15), upright positioning bores (the uppermost bores, Figure 3), pole 18 (having bores at the lower end thereof, Figure 4) and pins 15 and 21 for securing the pole in place. The vertical sidewalls include angled positioning bores 16 for mounting the pole at an angle.

10. As best as claim 8 can be understood, the tongue insert is sized to slideably fit within a trailer hitch.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peters.

13. Peters does not teach a specific length for the pole. It would have been an obvious matter of design choice to make the pole 4 to 6 feet in length since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Also, it would have been obvious to one of ordinary skill to utilize a pole of appropriate length so that the article supported thereon is off the ground.

14. Claims 17 -19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Barnhart, US #4,876,981.

15. Peters does not teach a flag or a pole that flexes, however these are well known in the art. Barnhart teaches a flag mounted on a pole that will bend when needed. It would have been obvious to a person having ordinary skill to utilize such a pole and flag on the mount of Peters if it is desired to mount a flag that will bend (instead of break) when subject to stress.

16. Claims 4-7 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Lassanske et al. US #6,062,451.

17. Peters does not teach an end wall mounted between the side walls, however, this is well known in the art. Lassanske teaches end walls 48 and 50 (Figures 3 and 4) mounted on the side walls to limit the tilt of the bracket (column 3 lines 39-42). It would have been obvious to one of ordinary skill to utilize such end walls in the device of Peters to provide more support for the pole when it is tilted.

18. As shown in Peters (Figure 3) the lower end of the pole is rounded near pin 15.

19. Peters (and Lassanske) do not teach the pin as having a snap lock and detent, however this is considered to be an equivalent alternative to the pin shown. Such pins and detents are well known in the art of poles, such as tent poles, umbrellas, etc. It would have been obvious to one of ordinary skill in the art to utilize such a connection so as to provide a secure connection that does not require additional parts.

20. Regarding the second pole receiver portion (as in claim 10), this is considered to be a duplication of parts. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Peters teaches a cross beam (Figure 2) where the duplicate poles may be mounted.

### ***Conclusion***

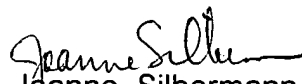
21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patents 6129371, 5938092, 5451088 and 5649656 are cited as of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joanne Silberman  
Primary Examiner  
Art Unit 3611

JS